

1 GEORGE J. TICHY II, Bar No. 041146
2 MICHAEL F. MCCABE, Bar No. 111151
3 MICHELLE R. BARRETT, Bar No. 197280
4 KIMBERLY L. OWENS, Bar No. 233185
5 LITTLER MENDELSON
6 A Professional Corporation
7 650 California Street, 20th Floor
8 San Francisco, California 94108
9 Telephone: (415) 433-1940
10 Facsimile: (415) 399-8490
11 E-mail: gtichy@littler.com, mmccabe@littler.com,
12 mbarrett@littler.com, kowens@littler.com

13 Attorneys for Defendants

14 HSBC MORTGAGE CORPORATION (USA) and
15 HSBC BANK USA, N.A.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 Philip Wong, Frederic Chaussy, and Leslie
20 Marie Shearn, individually, on behalf of all
21 others similarly situated, and on behalf of
22 the general public,

23 Plaintiffs,

24 v.

25 HSBC Mortgage Corporation (USA);
26 HSBC Bank USA, N.A.; and DOES 1
27 through 50, inclusive,

28 Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF MICHELLE KIM IN
OPPOSITION TO PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION UNDER
FED. R. CIV. P. 23**

Date: October 10, 2008
Time: 9:00 a.m.
Courtroom: 7 (19th Floor)
Judge: Hon. Maxine M. Chesney

I, Michelle Kim, hereby declare and state:

1. I have personal knowledge of the facts set forth below. If called as a witness,
I would testify to the following.

2. I have sold mortgages for approximately six years. I am currently employed
by HSBC Mortgage Corporation (USA) ("HMCU") as a Senior Retail Mortgage Lending
Consultant. I have worked at HMCU since January 2006. I am assigned to the Southern California

1 Region. There are currently seven loan officers in this region, one sales assistant and one sales
2 manager. The Regional Sales Manager is Amy Young.

3 3. My primary job duty is to sell mortgages, and I spend more than 50% of my
4 time engaged in sales activities. I am a salesperson. I enjoy the freedom of not having set hours and
5 not having to work in an office all day. I enjoy being out networking with people and developing
6 business.

7 4. HMCU does not require me to use any particular process to obtain sales
8 business. How lending consultants get business is up to them; they make these decisions
9 independently. My job description says that my job is to generate new mortgage deals, but it does
10 not tell me how to do so.

11 5. I work independently without supervision. I am not even required to check in
12 with my manager at any particular time. My manager sees the sales figures and can determine from
13 those figures that I am out there in the field working. I do not see my manager, Amy Young, very
14 often, but I do contact her by email or telephone when I have questions.

15 6. I treat my job at HSBC Mortgage in an entrepreneurial fashion, I set my own
16 goals with guidance from my manager. Every year, I draft my own business plan, which I am not
17 required to do. However, I do this because I believe every salesperson should have a business plan
18 in order to stay on track to meet their goals. HMCU does not have a template or standard business
19 plan. Instead, my business plan is a power point that I created myself. My business plan includes
20 my target loan funding per month and year, the number of potential clients I need to contact per day,
21 how many applications I need to submit per month and other detailed plans I have devised on my
22 own in order to reach my target income. I have chosen to follow the plan and procedure that I
23 follow because I believe it is the most effective way for me to be a successful senior retail mortgage
24 lending consultant. Every lending consultant at HMCU has a different business plan.

25 7. The primary reason I have chosen to be a salesperson is because I like making
26 my own schedule, determining how much I want to work and having freedom. I think salespeople
27 cannot be efficient and successful by being chained to a desk all day.

28

1 8. Every day at my job is different. My work hours vary based on how busy I
2 am. The number of clients that I meet with varies from day to day. I try to be flexible and meet with
3 clients at times that are convenient for them.

4 9. HMCU does not require that lending consultants work any minimum number
5 of hours per week. The number of hours lending consultants choose to work has a direct correlation
6 with how much money they want to make.

7 10. I choose to work more than many other lending consultants because I want to
8 retire early. I have already made almost \$500,000 this year. My goal is to make \$600,000 by the
9 end of 2008. To do that, I will need to reach my personal target of selling \$108,000,000 in
10 mortgages. In 2007, I made \$250,000.

11 11. I spend a lot of my time traveling. As a salesperson, I constantly need to meet
12 new people. I like to build a lot of face time with my clients and my referral sources. I am not
13 required to follow any guidelines regarding where to meet clients. I make sure that I am flexible and
14 visit my clients at locations and times that are convenient for them.

15 12. I get many clients through referrals. Some of my referrals come from various
16 branches of HSBC Bank USA ("HSBC Bank"), which is both a client and a business partner of
17 HMCU, but the majority of my sales come from my own sources.

18 13. I am not required to work in any particular location. HMCU has office space
19 on the eighth floor at 660 Figueroa Street, 8th Floor, Los Angeles, California. I have an assigned
20 cubicle there. If I wanted to, I could never come into the office, as I am not required to be in the
21 office during any particular hours or for any minimum amount of time. However, by choice, I do try
22 to come into the office one day a week to build partnerships and develop relationships with my
23 colleagues. On this one day, I also visit the branch of HSBC Bank that is located on the first floor of
24 660 Figueroa Street. I am the designated HMCU employee to receive referrals from this branch. I
25 like to put in some "face time" with the bankers and tellers there, so they will refer business to me
26 when bank customers ask about mortgages. When I visit the bank, I say hello to the employees and
27 see how they are doing.

28
DECLARATION OF MICHELLE KIM

3.

C 07 2446 MMC [ECF]

1 14. In addition to the downtown Los Angeles branch, located at 660 Figueroa
2 Street, I am also the designated person to receive referrals from the Beverly Hills branch of HSBC
3 Bank. I also formerly received referrals from the HSBC Bank branches in Torrance and Pasadena,
4 California. For a little under a year, I received business from all four of these bank branches
5 (downtown Los Angeles, Beverly Hills, Torrance and Pasadena).

6 15. I receive about 40% of my business from referrals from HSBC Bank. When a
7 client at one of my designated HSBC branches expresses interest in a mortgage, a banker will
8 hopefully call or email me, although the bankers are not obligated to do so, which is why I spend
9 time networking with the bankers. When I receive such a call, I make arrangements to meet with the
10 client at a location convenient for him or her. I also help the bank branches by referring my
11 customers to the bank for their banking needs.

12 16. I do not like to rely on HSBC Bank for all my business, however, and I focus
13 a majority of my time on networking at outside location and events to obtain business from many
14 sources. About 60% of my sales are from my own sources.

15 17. When I started working for HMCU, the "HSBC" brand name was not well
16 known in this area. There were only five branches of HSBC Bank in Southern California at that
17 time. The first year of my employment with HMCU, I engaged in extensive networking activities to
18 get the name out there.

19 18. When I began working for HMCU, I only received referrals from one branch
20 of HSBC Bank, and another lending consultant also got referrals from that same branch. At that
21 time, I got very little business from HSBC Bank.

22 19. In addition to referrals from HSBC Bank, my major sources of sales are
23 referrals from realtors, attorneys, CPAs, friends and past clients. I also get a lot of business from
24 repeat clients.

25 20. I never view any client as a "one time client" and always work hard to
26 maintain my relationships with clients, so they will give me repeat business when they want to
27 refinance or purchase another property. I generally send handwritten thank you cards to clients after
28 my first meeting with them and again after the loan closes. I tell my clients to contact me anytime

1 they have questions about new rates. In addition, if the market changes and interest rates drop, I
2 often contact clients to see if they want to refinance and purchase another loan. I also send
3 handwritten birthday cards to my clients and their children. I also send personal communications to
4 my clients periodically, such as informing them about home values or sending them interesting
5 articles. In the future, I am planning to create my own contact database to send automatic updates to
6 clients. None of these sales tactics are required by HMCU. They are all ideas that I came up with
7 on my own and choose to do because I believe they will help me be successful.

8 21. I am not required to spend any particular amount of time at the HSBC Bank
9 branches that I service. However, I choose to visit each branch at least once a week because it is
10 important to build good relationships with the bankers so that they will send referrals to me.

11 22. I spend at least two business days a week networking with my various
12 business partners in the Los Angeles area. I schedule meetings with clients and referral sources,
13 check in with them, take them to lunch or meet them out for a happy hour.

14 23. I spend one business day a month meeting with the three realtors who provide
15 me extensive referrals. I take them to lunch or just stop by their offices and speak with them.

16 24. I also attend a lot of networking events. I am an active member of the Asian
17 Business League, and I attend cocktail parties, dinners and conventions sponsored by that
18 organization in order to meet and network with potential clients. When I first started at HMCU, I
19 attended an Asian Business League event almost every week. Now, I still attend those events, but
20 not quite as often. A few times per year, I also attend monthly meetings or mixers of the Beverly
21 Hills or Torrance Chambers of Commerce to develop my sales business. HMCU does not require
22 me to attend any networking events; I am given the flexibility to choose what networking I want to
23 do to develop my own sales.

24 25. In addition to networking with my business partners and meeting with clients,
25 my other job duties include completing loan applications and working with clients and underwriters
26 to ensure all loan conditions are met. It only takes me about 20 minutes to complete a loan
27 application.

28

1 26. Selling loans requires building a personal relationship and dialogue with the
2 client. When I meet with a client, I gather information from the client to determine his or her short
3 and long term goals and needs. I assess their goals, such as whether they plan on getting married
4 and/or having kids and when, to determine which mortgage product is suited to the client. If the
5 client informs me that he or she plans to have kids in five years, for example, I recommend that the
6 client purchase a five year fixed interest loan. If the client plans to stay in the same house for a long
7 time, I recommend a fifteen or thirty year fixed interest loan. I also analyze clients' financial
8 situation, such as their employment history, assets and tax returns, to identify the amount and type of
9 loan for which they will qualify. After I gather information about the client's unique situation, I
10 determine which mortgage product will best meet the client's needs, educate the client about the
11 different products available to him or her and make recommendations. In doing this, I use my
12 independent judgment.

13 27. Most of my clients are high income clients and that is the market that I focus
14 on. I sell mostly jumbo mortgages, which are loans in an amount greater than \$417,000, and premier
15 deluxe mortgages, which are loans in an amount greater than \$1,000,000. At least 60% of the
16 mortgages I sell are for amounts greater than \$1,000,000.

17 28. The training that I received from HMCU consisted of a two week "high trust
18 sales" training course in Buffalo, New York when I first began. In addition, HMCU holds web
19 conferences periodically to inform lending consultants about new or changed products and
20 guidelines. HMCU does not require lending consultants to attend these sessions, but they are
21 beneficial because developing product knowledge is helpful for the sales process. HMCU also has
22 web courses that lending consultants can choose to do on their own time. Only a few courses, such
23 as sexual harassment prevention training, are required per year

24 29. I have also chosen to complete additional outside training to become a
25 certified mortgage planning specialist. This is not something that HMCU requires, but instead is
26 something I have chosen to do in order to better serve my clients.

27 30. I choose when to take breaks and for how long. HMCU allows me to
28 determine my own schedule, and no one has ever told me I cannot take a break or otherwise

1 discouraged me from taking breaks. Because I work independently, I am not required to ask
2 permission to take a break and can take a break at any time that works for me. If I need to run a
3 personal errand during the day, such as going to Walgreens, I do so without having to ask
4 permission.

5 31. Since the time when I accepted employment at HMCU, I have understood my
6 position to be exempt from overtime, and I agree with this designation.

7 32. Every year, I sign and agree to an incentive compensation plan from HMCU,
8 which I consider to be a contract. My compensation plan is the California Senior Retail Mortgage
9 Lending Consultant Incentive Compensation Plan.

10 33. My compensation plan explains everything about my income. Under the plan,
11 I earn incentive commissions at the end of every month. I only receive incentive commissions for
12 loans I sell that are funded. It generally takes about 30 days for a mortgage to be sold and funded,
13 sometimes longer. My manager sends me a calculation of my incentive commissions, which I have
14 an opportunity to review. I have never noticed anything incorrect about my incentive commissions.

15 34. The compensation plan has tiers where lending consultants receive a higher
16 percentage when they reach a higher level of funding. When I sell a loan, I have the discretion to
17 decrease a client's interest rate by 0.125%. However, when I do so, I get a lower percentage of
18 commissions, as provided by the compensation plan. It is entirely my choice whether to reduce the
19 rate, and I do so very rarely – only when I am competing with another company that has offered a
20 lower rate or for a close friend or family member. The impact of my decision to decrease the interest
21 rate is that my compensation will be different from another lending consultant who may have a loan
22 in the same amount but who may have chosen not to decrease the rate.

23 35. Clients must pay a loan application fee, which for most types of loans I sell is
24 used to pay for the property appraisal. The amount of the fee varies and is usually \$325, \$500 or
25 \$750. HMCU has made it clear that lending consultants must collect this fee from the client, and
26 every lending consultant knows about this requirement.

27
28

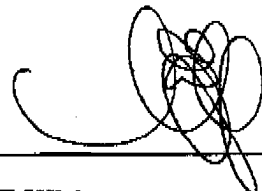
36. If a lending consultant fails to collect an application/appraisal fee, it is deducted from commissions, but that never happens if lending consultants follow the procedures they are supposed to follow.

37. I believe I had an application/appraisal fee deducted from my commissions one time. Before this happened, I had a chance to dispute it, but did not do so. I do not feel that it is unfair to deduct application/appraisal fees from my commissions because I agreed to do so and it is important to collect a fee from clients so they do not waste your time shopping around.

38. Application/appraisal fees are never deducted from the draw that lending consultants receive at the beginning of the month; they are only deducted from incentive commissions paid at the end of each month, if at all.

39. I received five notices about this lawsuit from the Plaintiffs' counsel, all of which I kept at home. No manager at HMCU has ever intimidated me from joining the lawsuit or threatened that I could lose my job if I did so. I do not want to join this lawsuit because I believe my position is properly classified as exempt, and I like my compensation and flexible work schedule the way it is. I believe this lawsuit is ridiculous.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge. Executed this 10th day of September, 2008, in TORRANCE, California.



MICHELLE KIM